



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



GRJH, Inc.
P.O. Box 728
Sharon, CT 06069

Re: Cobble Pond Farms
Main Street
North Conway, NH

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
AND HEARING
No. AF 01-017**

April 23, 2001

I. Introduction

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Waste Management Division (the Division) to GRJH, Inc., pursuant to RSA 146-A:15, RSA 485-C:18, and Env-C 601.05. The Division is proposing that fines totaling \$65,000 be imposed against GRJH for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. Parties

1. The Department of Environmental Services, Waste Management Division (the Division) is an administrative agency of the State of New Hampshire, having its principal offices at 6 Hazen Drive Concord, NH 03301.
2. GRJH, Inc. (GRJH) is a New Hampshire corporation having a mailing address of PO Box 728, Sharon, CT 06069. GRJH is the successor in interest to Peterson Petroleum of New Hampshire (Peterson Petroleum) and RGLL, Inc.

III. Summary of Facts and Law Supporting Claim(s)

1. RSA 146-A authorizes the Department of Environmental Services (DES) to regulate the investigation and remediation of petroleum releases. Pursuant to RSA 146-A:11-c, the Commissioner of DES has adopted Env-Ws 412 to implement standards for reporting and remediation of oil discharges. On November 2, 1991, the Commissioner adopted Env-Ws 412, rules regarding the procedures for the reporting and remediation of oil discharges. On November 20, 1996, the Commissioner readopted these rules.
2. RSA 146-A:15 authorizes the Commissioner of DES to impose fines of up to \$2,000 per offense for violations of RSA 146-A or rules adopted pursuant thereto. Pursuant to RSA 146-A:15(a), the Commissioner has adopted Env-C 606 to establish a schedule of fines for such violations.
3. RSA 485-C authorizes the DES to regulate the investigation, management and remediation of groundwater, as well as the establishment of groundwater management zones and issuance of groundwater management permits. Pursuant to RSA 485-C:4, the Commissioner of DES has adopted

Env-Wm 1403, rules to implement standards for the management and remediation of groundwater. (effective February 24, 1999, which supercedes Env-Ws 410, effective February 11, 1993 through February 23, 1999).

4. RSA 485-C:18 authorizes the Commissioner to impose fines of up to \$2,000 per offense for violations of RSA 485-C or rules adopted pursuant thereto. Pursuant to RSA 485-C:18, the Commissioner has adopted Env-C 609 to establish a schedule of fines for such violations.
5. Env-Ws 412 establishes procedures and requirements for notification, reporting, response actions, and investigations for sites where discharges of oil have occurred.
6. Env-Ws 412.11(e) requires responsible parties to report the results of implementing a remedial action plan, including an evaluation of the effectiveness of the remediation, to DES in writing.
7. Env-Wm 1403 establishes procedures and requirements for investigating, remediating and managing contamination for sites where discharges of regulated contaminants have occurred and establishes procedures for monitoring the groundwater.
8. Env-Wm 1403.13(a)(2) requires that an applicant for a groundwater management permit submit a signed application for a groundwater management permit within 60 days of a request by the DES to submit an application.
9. Env-Wm 1403.12(a)(1) requires a legally responsible person to apply for and obtain a groundwater management permit for a site where the discharge of a regulated contaminant at that site has caused and continues to cause the groundwater quality criteria of Env-Wm 1403.03 to be violated.
10. Env-Wm 1403.13(f) requires the permittee to submit periodic groundwater quality status reports to DES annually.
11. Env-Wm 1403.15(f) requires monitoring of groundwater in compliance with groundwater management permit conditions until contamination sources are removed or treated and compliance with groundwater quality is achieved.
12. Env-Wm 1403.23(b) requires the permittee to comply with all conditions in the original groundwater management permit, regardless of whether a renewal application is filed, until the Permit is renewed, the Facility is closed in accordance with all applicable requirements, or a certificate of no further action is issued by DES.
13. GRJH owns and operates the Cobble Pond Farms Service Station on East Main Street (Tax Map 260, Lot 51) in Conway (the Facility). The underground fuel storage tanks are registered with the Division in the name of GRJH, Inc. The Facility ID# is 0-112530.
14. On October 1, 1992, DES issued Groundwater Management Permit No. GWP-900805-C-001 (the Permit) to Peterson Petroleum for the Facility.
15. Condition No. 4 of the Permit requires that the permittee apply for renewal six months prior to the Permit s expiration date of September 30, 1997.
16. Condition No. 7 of the Permit requires monitoring of groundwater quality at three monitoring wells in April, July and November each year and monitoring of the on-site water supply well and an off-site water supply well, identified as Perkins Well , in April each year. Condition No. 7 also requires the permittee to submit summaries of water results to the Division annually in August.

17. The Division sent a letter to Peterson Petroleum by certified mail on March 14, 1996 notifying Peterson Petroleum that it was out of compliance with Permit requirements and requesting that Peterson Petroleum submit all available previous groundwater quality data to the Division.

18. The Division sent a letter to Peterson Petroleum by certified mail on July 12, 1999 requesting that Peterson Petroleum submit all previous groundwater quality data and complete two rounds of quarterly groundwater monitoring. The Division also requested that Peterson Petroleum submit these results to the Division within 45 days of the second quarterly round sampling date.

19. A key provision of the Permit was the monitoring of a two-family, shared private well located off-site on the other side of Main Street from the Facility. The Bellflowers and Eastmans currently own the properties and the shared private water supply well. T.R. Selling Engineering, P.C., an agent of Peterson Petroleum, sampled this well on December 9, 1999 and March 28, 2000. The samples were analyzed on December 16, 1999 and April 3, 2000, respectively. The results showed a concentration for both rounds of 27 ppb of MtBE. The second round exceeded the 13 ppb MtBE water quality standard in effect at the time.

IV. Violations Alleged

1. GRJH has violated Env-Wm 1403.13(f) and Env-Ws 412.11(e) by failing to submit annual summaries of water quality results for the years, 1993 through 1997, during the five-year term of the Permit.
2. GRJH has violated Env-Wm 1403.15(f) and Env-Ws 412.11(e) by failing to monitor groundwater quality fifteen separate occasions during the years 1993 through 1997.
3. GRJH has violated Env-Wm 1403.23(a) by failing to apply for renewal of the Permit.
4. GRJH has violated Env-Wm 1403.23(b) and Env-Ws 412.11(e) by failing to perform groundwater monitoring on 9 separate occasions after Permit expiration for the period September 1997 to November 2000.
5. GRJH has violated Env-Wm 1403.23(b) and Env-Ws 412.11(e) by failing to submit annual summaries of water quality results on 3 separate occasions after Permit expiration for the period September 1997 to November 2000.

V. Proposed Administrative Fines

1. For the violation identified in IV.1, Env-C 606.04(d) specified a fine of \$2,000 per calendar month for each month or portion thereof the results are not submitted. For the 5 separate failures to report the results of implementation of the plan by groundwater monitoring and submission of analytical data annually as stipulated in the Permit for the site, at this time the Division is seeking a fine for one month only per violation for a total fine of \$10,000.
2. For the violation identified in IV.2, Env-C 606.04(c) specifies a fine of \$2,000 per calendar month for each month or portion thereof the results are not submitted. For the 15 separate failures to comply with Permit Condition No. 7 and implement the plan by performing groundwater monitoring, at this time the Division is seeking a fine for one month only per violation for a total fine of \$30,000.
3. For the violation identified in IV.3, Env-C 609.06(c) specifies a fine of \$1,000 per calendar month or portion thereof that the Permit is not obtained after March 30, 1997. The Division did not send a written

request for Permit renewal. The Division is seeking a fine only for one month since the application for Permit renewal was required, for a total fine of \$1,000.

4. For the violation identified in IV.4, Env-C 606.04(c) specifies a fine of \$2,000 per calendar month for each month or portion thereof the plan is not implemented. For the 9 separate failures to perform post-Permit groundwater monitoring, at this time the Division is seeking a fine for one month only per violation for a total fine of \$18,000.

5. For the violation identified in IV.5, Env-C 606.04(d) specifies a fine of \$2,000 per calendar month for each month or portion thereof the results are not submitted. For the 3 separate failures to report the results of implementation of the plan by post-Permit groundwater monitoring and reporting, at this time the Division is seeking a fine for one month only per violation for a total fine of \$6,000.

The total fine sought is \$65,000.

VI. Hearing, Required Response

PPNH has the right to a hearing to contest the Division's allegations before the fine is imposed. A hearing on this matter has been scheduled for **Monday, June 4, 2001 at 10:30 a.m.** in **Room C-110** of the DES offices at **6 Hazen Drive** in Concord, NH.

Pursuant to Env-C 601.06, PPNH is required to respond to this notice. Please respond **no later than May 18, 2001**, using the enclosed colored form as follows:

1. If PPNH plans to attend the hearing, please have an authorized representative sign the appearance (upper portion) and return it to James Ballentine, DES Enforcement Paralegal, at the address noted on the form.
2. If PPNH chooses to waive the hearing and pay the proposed fine, please have an authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to Mr. Ballentine.
3. If PPNH wishes to discuss the possibility of settling the case, please have an authorized representative sign the appearance and return it to Mr. Ballentine **and** call Mr. Ballentine to indicate PPNH's interest in settling.

PPNH is not required to be represented by an attorney. If PPNH chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

If PPNH wishes to have a hearing but is unable to send an authorized representative to the hearing as scheduled, PPNH must notify Mr. Ballentine at least one week in advance of the hearing and request that the hearing be rescheduled. If PPNH does not notify Mr. Ballentine in advance and does not have an authorized representative attend the hearing, the hearing will be conducted anyway in accordance with Env-C 204.09.

VII. Determination of Liability for Administrative Fines

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that PPNH committed the violation(s) alleged and that the total amount of fine(s) sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing

sought to be proved is true.

If the Division proves that PPNH committed the violation(s) and that the amount of fine(s) sought is the appropriate amount under the applicable statute and rules, then the fine(s) sought will be imposed, subject to the following:

Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that PPNH proves, by a preponderance of the evidence**, applies in this case:

1. The violation was a one-time or non-continuing violation, **and** PPNH did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** PPNH did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violation was committed, PPNH was making a good faith effort to comply with the requirement that was violated.
3. PPNH has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to PPNH's case, which was not known to the Division at the time the fine was proposed.

NOTE ALSO that pursuant to Env-C 601.09(d), the fine can be **increased by 10%** for each of the circumstances listed below that the Division proves, by a preponderance of the evidence, applies in this case:

1. PPNH was aware of the requirement that was violated at the time of the violation.
2. Any environmental harm or threat of harm caused by the violation has not been corrected.
3. PPNH benefited financially, whether directly or indirectly, from the violation.
4. PPNH did not make a good faith effort to correct the violation after being notified that the violation had occurred.
5. PPNH has a history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
6. Other information exists which causes the violation to be more serious, for instance because a large area of land was impacted by the violation or an ecosystem was destroyed by the violation.

IMPORTANT NOTICE

The hearing that has been scheduled is a formal hearing. The hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is PPNH s opportunity to present testimony and evidence that PPNH did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If PPNH has any evidence, such as photographs, business records or other documents, that PPNH believes show that PPNH did not commit the violation(s) or that otherwise support PPNH s position, PPNH should bring the evidence to the hearing. PPNH may also bring witnesses (other people) to the hearing to testify on PPNH s behalf.

If PPNH wishes to have an informal meeting to discuss the issues, PPNH must contact Mr. Ballentine at (603) 271-6072 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via DES s Web page (www.state.nh.us/des). If PPNH has any questions about this matter, please contact James Ballentine, DES Enforcement Paralegal, at (603) 271-6072.

COPY
Philip J. O'Brien, Ph.D., Director
Waste Management Division

Enclosure (NHDES Fact Sheet #CO-2 2000)

cc: Gretchen Rule, DES Enforcement Coordinator
Susan Alexant, DES Hearings and Rules Attorney
Administrator, Town of Conway
Chairman, Conway Board of Selectmen
George G. Lombardo, P.E., Administrator, NHDES - ORCB
Lynn A. Woodard, P.E. NHDES-ORCB
Gary Lynn, P.E. NHDES-ORCB

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APPEARANCE

____ I/we will attend the hearing scheduled for **Monday, June 4, 2001 at 10:30 a.m.** in **Room C-110** of the DES offices at **6 Hazen Drive** in Concord, NH.

Signature

Date

Name (please print or type): _____

Title: _____

WAIVER OF HEARING

____ I/we certify that I/we understand my/our right to a hearing regarding the imposition of the proposed administrative fine and that I/we hereby waive those rights. The fine payment in the amount of \$65,000 paid to Treasurer, State of New Hampshire is enclosed.*

** If you pay by check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

Signature

Date

Name (please print or type): _____

Title: _____

RETURN THIS PAGE ONLY TO:

James Ballentine, DES Enforcement Paralegal
Department of Environmental Services
6 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095